

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA, CR 10-23-GF-BMM-01

Plaintiff,

vs.

GENTRY CARL LABUFF,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. Labuff of violating his conditions of supervised release by submitting a urine sample that tested positive for methamphetamine and by failing to reside in a residential reentry center. He admitted to the violations. Mr. Labuff's supervised release should be revoked. He should be sentenced to four months of custody, with twenty-four months of supervised release to follow. The conditions of his supervised release should include a condition requiring Mr. Labuff to complete the treatment program at

Connections Corrections in Butte, Montana.

II. Status

In June 2010, a jury found Mr. Labuff guilty of Robbery/Aiding and Abetting Robbery. (Doc. 60.) United States District Court Judge Sam E. Haddon sentenced Mr. Labuff to 62 months in custody and 36 months of supervised release. (Doc. 80.) Mr. Labuff's first term of supervised release began on October 1, 2014.

On June 30, 2015, the United States Probation Office (USPO) held a non-compliance hearing to address Mr. Labuff's use of methamphetamine. Mr. Labuff admitted to using methamphetamine on June 11, 2015, and June 29, 2015. Mr. Labuff was placed in mental health counseling. On July 1, 2015, the USPO filed a Report on Offender under Supervision, which outlined the violations set forth above. (Doc. 120.)

On August 12, 2015, the USPO filed a second Report on Offender under Supervision, notifying the Court that Mr. Labuff had tested positive for methamphetamine. Mr. Labuff's probation officer recommended Mr. Labuff be allowed to remain in the community and attend mental health and chemical dependency treatment. (Doc. 121.)

On September 30, 2016, Mr. Labuff's supervised release was revoked

because he admitted to using methamphetamine. He was sentenced to four months of custody and 32 months of supervised release. (Doc. 131.) His second term of supervised release began on December 31, 2015. (Doc. 137.)

On March 24, 2016, The Court revoked Mr. Labuff's supervised release because Mr. Labuff failed to notify the United States Probation Office (USPO) of an address change, failed to participate in substance abuse testing, and failed to report as directed. The Court sentenced Mr. Labuff to four months in custody with twenty-eight months of supervised release to follow. (Doc. 147.) Mr. Labuff's current term of supervised release began on July, 1, 2016.

Petition

On September 7, 2016, the USPO filed a petition asking the Court to revoke Mr. Labuff's supervised release. (Doc. 149.) The USPO accused Mr. Labuff of violating the conditions of his supervised release by submitting a urine sample that tested positive for methamphetamine and by failing to reside in a residential reentry center. Based on the petition, United States District Court Judge Brian Morris issued a warrant for Mr. Labuff's arrest. (Doc. 150.)

Initial appearance

On September 13, 2016, Mr. Labuff appeared before the undersigned in Great Falls, Montana, for an initial appearance. Federal Defender Anthony

Gallagher accompanied him at the initial appearance. Assistant United States Attorney Ryan Weldon represented the United States.

Mr. Labuff said he had read the petition and understood the allegations. Mr. Labuff waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned. The undersigned continued the revocation hearing until October 12, 2016.

Revocation hearing

On October 12, 2016, Mr. Labuff appeared with Federal Defender Evangelo Arvanetes before the undersigned for a revocation hearing. Mr. Starnes appeared on behalf of the United States. Mr. Labuff admitted that he violated the conditions of his supervised release as alleged in the petition. The violations are serious and warrant revocation of Mr. Labuff's supervised release.

Mr. Labuff's violation grade is Grade C, his criminal history category is II, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months. He could be ordered to remain on supervised release for twenty-eight months, less any custody time imposed. The United States Sentencing Guidelines call for four to ten months in custody.

Mr. Arvanetes recommended a sentence of four months of custody. Mr. Arvanetes said some prison time was required but argued Mr. Labuff has done well

on supervision before and can do so again, especially if he resides at a pre-release facility. Mr. Starnes agreed with the recommendation.

III. Analysis

Mr. Labuff's supervised release should be revoked because he admitted violating its conditions. Mr. Labuff should be sentenced to four months of custody, with twenty-four months supervised release to follow. The conditions of supervised release should include a condition requiring Mr. Labuff to complete treatment at Connections Correction in Butte, Montana. This sentence would be sufficient given the serious violation of the Court's trust, but it would not be greater than necessary.

IV. Conclusion

Mr. Labuff was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider Mr. Labuff's objection, if it is filed within the allotted time, before making a final determination on whether to revoke Mr. Labuff's supervised release and what, if any, sanction to impose. Mr. Labuff waived his right to appeal. The United States likewise waived its right to appeal.

The undersigned **FINDS:**

Gentry Carl Labuff violated the conditions of his supervised release by submitting a urine sample that tested positive for methamphetamine and by failing to reside in a residential reentry center

The Court **RECOMMENDS:**

The district court should enter the attached Judgment, revoking Mr. Labuff's supervised release and committing Mr. Labuff to the custody of the United States Bureau of Prisons for four months. He should be sentenced to twenty-four months of supervised release. The district court should also require Mr. Labuff to complete treatment at Connections Corrections in Butte, Montana.

Dated the 17th day of October 2016.



John Johnston
United States Magistrate Judge